

ORIGINAL

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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Arizona Corporation Commission

2017 MAY 24 12 33 37

DOCKETED

MAY 24 2017

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In the matter of:

WALTER JEROME CLARKE (CRD#
2579982),

WEALTH INDEX ADVISORS, LLC (CRD#
281750), an Arizona limited liability
company,

Respondents.

DOCKET NO. S-21013A-17-0153

NOTICE OF OPPORTUNITY FOR HEARING REGARDING PROPOSED ORDER OF DENIAL

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that, under the Arizona Investment Management Act, A.R.S. § 44-3101 *et seq.* ("IM Act"), grounds exist for the denial of Walter Jerome Clarke's application to be licensed as an investment adviser representative and Wealth Index Advisors, LLC's application to be licensed as an investment adviser.

I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the IM Act.

II.

RESPONDENTS

2. Wealth Index Advisors, LLC ("WIA") is a limited liability company organized under the laws of the state of Arizona on or about September 25, 2015.

1 3. At all times material to this matter, Clarke has been a resident of Arizona.

2 4. At all times material to this matter, Clarke has been the president, sole member, and
3 sole manager of WIA.

4 5. WIA has never been registered or licensed with the Commission as a securities
5 salesman, securities dealer, investment adviser, or investment adviser representative.

6 6. From on or about March 17, 2004 until December 31, 2012, Clarke was licensed with
7 the Commission as an investment adviser representative in association with Oxford Investment
8 Partners, LLC ("Oxford"), an SEC-registered investment adviser firm controlled by Clarke.

9 7. On December 31, 2012, Clarke's license with the Commission as an investment
10 adviser representative terminated.

11 8. WIA and Clarke may be referred to collectively as "Respondents."

12 **III.**

13 **FACTS**

14 9. On May 30, 2012, the U.S. Securities and Exchange Commission ("SEC") initiated
15 an action against Clarke and Oxford for violations of the Investment Advisers Act of 1940 and the
16 Investment Company Act of 1940.

17 10. On February 15, 2013, Clarke consented to the SEC's entry of an Order Accepting
18 Offer of Settlement ("the SEC Order").

19 11. The SEC Order states that Clarke willfully violated Sections 206(1) and 206(2) of
20 the Advisers Act by employing devices, schemes or artifices to defraud clients, and engaging in
21 transactions, practices or courses of business that defrauded clients or prospective clients.

22 12. The SEC Order also states that Clarke willfully violated Section 206(4) of the
23 Advisers Act and Rule 206(4)-8 promulgated thereunder, which prohibits fraudulent conduct by
24 advisers to "pooled investment vehicles" with respect to investors or prospective investors in those
25 pools.
26

1 13. Specifically, the SEC found that in March 2008, Clarke sold 7.5% of his ownership
2 interest in Oxford to an Oxford client for \$750,000—a fraudulently inflated price. The SEC further
3 found that Clarke deliberately employed several devices to fraudulently arrive at the \$10,000,000
4 valuation for Oxford:

5 a) Clarke applied an excessive and baseless multiple to Oxford's 2007 annual
6 revenue;

7 b) Clarke calculated Oxford's 2007 revenue by quadrupling Oxford's fourth
8 quarter 2007 revenue—the highest of 2007—and ignoring Oxford's lower revenue numbers from
9 the previous three quarters; and

10 c) Clarke added an additional, baseless \$1,000,000 “premium” to Oxford's
11 valuation, which he claimed accounted for Oxford's “amazing” growth trajectory.

12 14. The SEC Order also states that in September 2007 and March 2008, Clarke
13 convinced three Oxford clients to invest a total of \$316,000 to fund two loans originated by
14 Cornerstone Lending Group. The SEC further found that Clarke did not disclose to the clients that
15 he was a co-founder and owner of Cornerstone Lending group, and that Clarke would profit from
16 the loan originations. The SEC also found that, within a few months of the loans being funded, the
17 borrowers defaulted and the Oxford clients lost their entire investments.

18 15. In addition, the SEC Order states that in November 2008, Clarke convinced four
19 clients to invest approximately \$10,000 each in HotStix, a privately-held company, without
20 disclosing to the clients that the owners of HotStix were paid consultants of Oxford with ownership
21 interests in Oxford. The SEC further found that HotStix subsequently failed, resulting in the
22 clients' investments being marked down to zero.

23 16. Pursuant to the SEC Order, Clarke was barred from association with any broker,
24 dealer, or investment adviser, with the right to apply for reentry after two years.

19. On February 18, 2016, WIA filed an application with the Commission for licensure as an investment adviser.

IV.

(Denial of Investment Adviser and Investment Adviser Representative Licenses)

a) Clarke is enjoined by an order of an administrative tribunal from engaging in or continuing any conduct or practice involving a violation of federal securities laws within the meaning of A.R.S. § 44-3201(A)(9);

c) Clarke has been found civilly liable by a governmental authority for fraudulent acts and practices in connection with the securities business within the meaning of A.R.S. 44-3201(A)(11).

4

V.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order the denial of Clarke's license as an investment adviser representative pursuant to A.R.S. §§ 44-3201(A)(9), 3201(A)(10), and 3201(A)(11);
2. Order the denial of WIA's license as an investment adviser pursuant to A.R.S. § 44-3201(C); and
3. Order any other relief that the Commission deems appropriate.

VI.

HEARING OPPORTUNITY

Each Respondent may request a hearing pursuant to A.R.S. § 44-3212 and A.A.C. R14-4-306.

If a Respondent requests a hearing, the requesting Respondent must also answer this Notice. A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting Respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Kacie Cannon, ADA Coordinator, voice phone number (602) 542-3931, e-mail kcannon@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation. Additional information

about the administrative action procedure may be found at <http://www.azcc.gov/divisions/securities/enforcement/AdministrativeProcedure.asp>.

VII.

ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if a Respondent requests a hearing, the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.


Additionally, the answering Respondent must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007, addressed to Chris Nichols.

The Answer shall contain an admission or denial of each allegation in this Notice and the original signature of the answering Respondent or Respondent's attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

When the answering Respondent intends in good faith to deny only a part or a qualification of an allegation, the Respondent shall specify that part or qualification of the allegation and shall admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

The officer presiding over the hearing may grant relief from the requirement to file an Answer for good cause shown.

Dated this 24th day of May, 2017.


Matthew J. Neubert
Director of Securities